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February 23, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

Re: MM Docket No. 99-215

RM-9337

Mason, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of Jayson D. Fritz and Janice M. Fritz, are an original and four copies of their "Motion to Dismiss Counterproposal" in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump

Counsel for Jayson D. Fritz and Janice M. Fritz

AGC:mah
Enclosures

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations.
(Mason, Texas)

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MM Docket No. 99-215
RM-9337

Directed to: Chief, Allocations Branch

MOTION TO DISMISS COUNTERPROPOSAL

Jayson D. Fritz and Janice M. Fritz ("Fritz"), by their attorneys, hereby respectfully submit their Motion to Dismiss Counterproposal in the above-captioned proceeding, in which the Commission has proposed the allotment of additional FM broadcast channels at Mason, Texas. With respect thereto, the following is stated:

1. BK Radio (the petitioner in this proceeding), Fritz, and Foxcom, Inc. ("Foxcom") are all mutually exclusive applicants for a construction permit for a new FM broadcast station to operate on Channel 249C2 at Mason. BK Radio has sought to eliminate the mutual exclusivity by requesting the allotment of additional channels at Mason, so that each applicant may receive a construction permit, and an additional channel will be available for other parties which might express an interest a channel at Mason. The Commission issued a *Notice of Proposed Rule Making*, DA 99-1142, released June 11, 1999 ("*NPRM*"), in which it proposed to allot the additional channels requested by BK Radio.

2. In response to the *NPRM*, Munbilla Broadcasting Corporation ("Munbilla") submitted

a Counterproposal in which it proposed the allotment of Channel 239C2 to Menard, Texas, as a first local transmission service, the substitution of Channel 273C2 for Channel 249C2 at Mason, and the allotment of Channel 249C2 to Fredericksburg, Texas, as a second local transmission service. Fritz then submitted Reply Comments expressing continuing opposition to the substitution of a new channel for Channel 249C2 at Mason.

3. The Commission has not yet released a Public Notice inviting comments on the Munbilla counterproposal. On February 7, 2000, however, BK Radio submitted a "Motion for Leave to File Comments on Counterproposal" and its "Comments on Counterproposal." In its Comments, BK Radio demonstrated that the Munbilla counterproposal is technically unacceptable in that the proposed allotment at Fredericksburg would be short-spaced. Specifically, the technical study attached to BK Radio's Comments demonstrates that the proposed Fredericksburg allotment would be substantially short-spaced to the previously filed, and cut-off, proposal for Station KVCQ(FM), Luling, Texas, in MM Docket No. 98-198.

4. Assuming that the technical study attached to the BK Radio Comments is correct, then the Munbilla counterproposal should be dismissed without further consideration. BK Radio has demonstrated that the Munbilla counterproposal is fatally flawed. It is quite clear that a party may not file a counterproposal in the hopes that existing technical problems will later be resolved in other proceedings. Rather, "counterproposals must be technically correct at the time of their filing." *Broken Arrow and Bixby, Oklahoma, and Coffeerville, Kansas*, 3 FCC Rcd 6507, 6511 n.2 (1988), *recon. denied*, 4 FCC Rcd 6981 (1989). Munbilla's counterproposal cannot meet that standard.

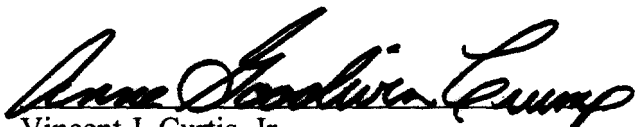
5. Given that Munbilla's counterproposal was defective at the time of filing, it should

now be dismissed without further delay. It would serve no purpose for the Commission to consider further such a flawed proposal. Likewise, the issuance of a Public Notice inviting comments would only waste the resources of the Commission and the parties. Obviously, it is useless for parties to file comments, or for the Commission to consider comments, concerning a proposal which cannot be granted.

WHEREFORE, the premises considered, Fritz respectfully requests that Munbilla's counterproposal in the above-referenced proceeding be dismissed immediately.

Respectfully submitted,

JAYSON D. FRITZ AND JANICE M. FRITZ

By: 
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February 23, 2000

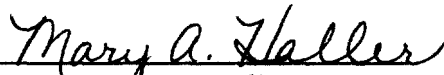
CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Motion to Dismiss Counterproposal" were sent this 23rd day of February, 2000, by United States mail, postage prepaid, to the following:

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